

TO: MEMBERS OF THE COMMITTEE ON GOVERNMENT REFORM
UNITED STATES CONGRESS

FROM: DAVID B. ALBO, MEMBER VIRGINIA HOUSE OF DELEGATES
CHAIRMAN, COURTS OF JUSTICE COMMITTEE

DATE: 7/14/06

Thank for your invitation to speak to you about this extremely serious problem of criminal street gangs in Virginia.

As you may be aware, I am currently serving my 14th year as a Member of the Virginia House of Delegates, where for four years I served as Chairman of the Criminal Law Sub-Committee and currently serve as the Chair of the Full Courts of Justice Committee (the "Judiciary Committee"). In my "real life" I am an attorney who has been practicing law for 18 years and who has served as both a court appointed defense attorney, private defense attorney, and a District Court Prosecutor. So criminal street gangs are a topic of which I am quite familiar.

Later today, you will hear from our Virginia Office of the Attorney General who will present a summary of all the new laws that have been enacted by Virginia over the past several years to address criminal street gangs. I commend the presentation to you because they are the result of arduous work by the Attorney General and the House and Senate members of the Courts of Justice Committees. We looked at every state in the country and the effectiveness of their laws. In short, our Virginia laws are a "Greatest Hits" of what was found to be effective in other states.

Let me take this opportunity to put my legal hat on and discuss with you the basic underpinnings of our laws.

To convict someone of a criminal street gang crime, you have to show that a criminal street gang exists and then you have to show that the Defendant is a member of that criminal street gang. The difficult portion of that, surprisingly, is not that the Defendant is a member. The difficulty was and is proving the organization is a criminal street gang. The reason is that these organizations have many different sub-groups with slightly varying styles of cloths, organizations, and even differing crimes that they commit.

What is a criminal street gang?

You may have noticed that I don't use the word "gang." This is because there is nothing illegal about "gangs." Under our Constitution and the US Constitution, the Courts have interpreted that under the First Amendment a person has the Constitutional Right to the "Freedom of Association." In simple terms, a kid can hang out with whomever he wants. Our first job in writing these laws a number of years ago was to define a class of individuals with whom one could not Constitutionally associate. We determined that just like the "mob" or a "terrorist cell", one does not have the Constitutional Right to associate with an organization organized for the purpose of committing crimes. Therefore, we passed our gang definition by stating that a "criminal street gang" is an organization of three or more people which as the objective of committing certain crimes and whose members commit these crimes. We did not want to create harsh punishment for groups of people who commit minor crimes such as trespassing, so we create a list of these crimes. We call them "predicate criminal acts."

"Criminal street gang" means any ongoing organization, association, or group of three or more persons, whether formal or informal, (i) which has as one of its primary objectives or activities the commission of one or more criminal activities; (ii) which has an identifiable name or identifying sign or symbol; and (iii) whose members individually or collectively have engaged in the commission of, attempt to commit, conspiracy to commit, or solicitation of two or more predicate criminal acts, at least one of which is an act of violence, provided such acts were not part of a common act or transaction.

"Predicate criminal act" means (i) an act of violence; (ii) any violation of § [18.2-42](#), [18.2-46.3](#), [18.2-51](#), [18.2-51.1](#), [18.2-52](#), [18.2-53](#), [18.2-55](#), [18.2-56.1](#), [18.2-57](#), [18.2-57.2](#), [18.2-59](#), [18.2-83](#), [18.2-121](#), [18.2-127](#), [18.2-128](#), [18.2-137](#), [18.2-138](#), [18.2-146](#), [18.2-147](#), subsection H, H 1 or H 2 of § [18.2-248](#), § [18.2-248.01](#), [18.2-255](#), [18.2-255.2](#), [18.2-282.1](#), [18.2-286.1](#), [18.2-287.4](#), [18.2-308.1](#), or [18.2-356](#); (iii) a second or subsequent felony violation of subsection C of § [18.2-248](#) or of § [18.2-248.1](#); (iv) any violation of a local ordinance adopted pursuant to § [15.2-1812.2](#); or (v) any substantially similar offense under the laws of another state or territory of the United States, the District of Columbia, or the United States.

I should note that every year, this "predicate criminal act" list has grown. We listen to law enforcement and they will tell us what these groups are up to. For example, this year we added prostitution. In other words, in addition to groups organized to sell drugs or maliciously wound people, police found that there are groups of people organized for the purpose of engaging in prostitution, and without a change in the law, that "gang" of people would not be considered a "criminal street gang."

How does a Prosecutor prove the gang is organized for the purpose of committing these crimes?

As we started implementing this new law, prosecutors started saying that it's tough to prove this. A very sophisticated police force could have records and proof of the members of gangs and the types of crimes they commit. And it would take a day or sometimes two days in every case to present all the evidence of stakeouts, past criminal convictions, undercover recordings, etc. to prove that Gang X was a criminal street gang. For jurisdictions with resources like Fairfax, this could be done, but for smaller jurisdictions, it was impossible.

We started looking for a way that would assist prosecutors in proving that MS-13 was a gang. More importantly, since MS-13 is unfortunately not our only criminal street gang, we needed to help prosecutors prove other organizations were gangs.

Believe it or not, we found a huge source of information where actual members of criminal street gangs tell government officials what gang they are in. When a criminal street gang member is put in prison, one of the first things they do is request not to be put in the cell area with a rival criminal street gang members. For example, a Blood would tell the prison officials, "I am a Blood, do not put me in the same cell area with the Crips." *Voila!* We now have a self admitted source of information of members of criminal street gangs and the crimes they commit. This year, we have required the Department of Corrections to compile this information. Soon it will be tested in Court. We believe it will be admissible under the business records or statements against interest exceptions to the hearsay rule.

I could go on and on about this topic, but instead will offer myself as a resource to you at any time and offer you only one word of advice. Talk to the undercover police and prosecutors. Listen to them and devise laws and programs that help them do their job.

Kind Regards,

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